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| IN THE MATTER OF | : | BEFORE THE |
| MT. GREGORY | : | HOWARD COUNTY |
| UNITED METHODIST CHURCH | : | BOARD OF APPEALS |
| Petitioner | : | HEARING EXAMINER |
| | : | BA Case No. 08-029C |

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DECISION AND ORDER

On January 21, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Mt. Gregory United Methodist Church for a Structure Used Primarily for Religious Activities Conditional Use to replace an existing church located in an RC-DEO Zoning District (Rural Conservation: Density Exchange Option) Zoning District, pursuant to Section 131.N.39 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Howard Alderman, Esquire, represented the Petitioner. Jacob Hikmat testified on behalf of the Petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property, 2325 Maryland Route 97, is located in the 4th Election District on the east side of Route 97, about 100 feet south of Millers Mill Road. The Property is referenced on Tax Map 14, Grids 5 and 11, as Parcels 130 and 1934.

2. The 3.827-acre Property is improved with a frame church building situated close to and centered on its MD 97 frontage. Behind the church is a one-story frame shed building in the corner of a large concrete pad. This church is listed in the Howard County Historic sites Inventory as HO-26. The Inventory describes the late 19th century church as one of the most notable black churches in Howard County. Because it predates the Zoning Regulations, the Department of Planning and Zoning has deemed it a nonconforming structure.

3. The existing church sits at a high point along MD 97. From here, the Property drops in elevation to its north, east, and south lot lines. The Property is subject to wetland and stream buffer setbacks along these lot lines.

4. Two driveways currently provide access to the existing church, a northern gravel driveway, and a southern driveway ending in a 20-space parking lot in the Property's southwestern section close to MD 97.

5. Vicinal Properties. Adjacent properties are also zoned RC-DEO. Parcel 36 to the north, east, and south is a farm encumbered with an agricultural preservation easement. Beyond parcel 36 to the south, Lot 1 of Parcel 252 is unimproved and Lot 2 is improved by a single-family detached dwelling. Across MD 97 to the southwest is Parcel 249, the site of the Howard County Regional Park and the Glenwood Library. The parcels to the Property's immediate west and northwest are improved with single-family detached dwellings.

6. Zoning History. In Board of Appeals Case No 00-38E, the Board of Appeals approved the Petitioner's petition for a special exception for structures used primarily for religious activities to replace an existing church (July 20, 2001). In Board of Appeals Case No 05-016C, the Board of Appeals Hearing Examiner approved the Petitioner's petition for a special exception for structures used primarily for religious activities to replace an existing church (November 3, 2005). These approvals have lapsed.

7. Roads. MD 97 has two travel lanes, wide paved shoulders, and about 42 feet of paving within an existing 80-foot right-of-way. The posted speed limit to the Property's south is 45 MPH and to the north, 50 MPH. The topography appears to limit visibility to the south from both driveways. In response to the Maryland State Highways Administration comment (attached to the Technical Staff Report (the "TSR")) that the continued use of the southern access for the proposed use is unacceptable, Mr. Hikmat stated that these comments likely referred to an earlier plan. The current conditional use plan dated September 2008 and General Note 9 on this plan indicate this driveway's removal.

8. The Property is served by public water and sewer facilities. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential Area." Transportation Map 2000-2020 of the 2000 General Plan depicts MD 97 as a Minor Arterial.

9. The Petitioner is proposing to remove the existing church on Parcel 193 and construct a new religious facility (the "church") on Parcel 130. The church would be constructed in two phases. In Phase I, a 4,494 square foot rectangular building would be constructed to the east of the existing parking lot and south of the existing church. In Phase II, a 2,000-square foot addition

would be constructed to the north end of the Phase I building and a 714 square foot addition would be constructed to the Phase I building's south end. The proposed building height is 24 feet. The church would be used primarily on Sundays, with some weekday religious and community activities such as ministry and club meetings. The structure would also house Sunday school classes and a study for the pastor.

10. The new vehicular circulation pattern would direct vehicles to enter from a sole ingress/egress driveway to be located about 95 feet from the Property's northwest corner. This driveway would lead to a paved parking area containing 61 parking spaces behind the church, 11 spaces to the church's south, and 8 disabled spaces in front of the church. The proposed church would have 99 seats upon completion of Phase I and 240 seats upon completion of Phase II. Because one parking space is required for every three seats, 80 parking spaces are required for the 240 seats and 80 spaces are proposed.

11. In response to Mr. Hikmat's testimony about the proposed phasing plan, I stated that I am extending the time to establish conditional uses by as much as three years due to the current extraordinary economic climate.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

A. **Harmony with the General Plan.** Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in

the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and**
- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.**

The General Plan. The Howard County General Plan designates the area in which the Property is located as a "Rural Conservation Area" land use. A religious facility is presumptively considered compatible with rural residential area land uses. In this case, the Property has been used primarily for religious activities for more than 100 years. Although the church's larger size would increase the intensity of traffic, the use would be located on MD 97, a Minor Arterial, which can accommodate the use. The size of the Property, 3.827-acres, is also sufficient to support the use, as it meets all setback requirements. I conclude the nature and intensity of operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a. Because only one use is proposed, Section 131.B.1.b does not apply.

B. Adverse Impacts. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

When assessing a proposed conditional use under these criteria, we must begin with the realization that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in an RC-DEO district. The proper question is whether those inherent adverse effects are greater at the proposed site than they would be generally elsewhere within the RC-DEO district. *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a structure used primarily for religious activities in the RC-DEO district.

a. Physical Conditions. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The testimony and evidence indicate the proposed facility will not generate inordinate noise, significant outdoor lighting, or other physical effects detectable within the neighborhood. Any outdoor lighting will be minimal and shielded and the petition states that the use will not generate noise or other physical effects. Consequently, I conclude the Petitioner has adequately shown that any noise, lighting, or other physical conditions generated by the proposed use will not

be greater than that which is ordinarily associated with a structure used primarily for religious activities in the district.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

Based on the evidence, I conclude the Petitioner has met its burden of demonstrating the proposed use complies with Section 131.B.2.b. The use will be conducted primarily indoors and landscaping will be provided in accordance with the Landscape Manual. Abutting Parcel 36, being encumbered by an agricultural preservation easement is unlikely to be developed, so it is unlikely the proposed use would hinder its development. All landscaping buffers will meet or exceed county standards and there is no material evidence that the inherent operational characteristics of the proposed church will discourage the use of adjacent land and structures.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The proposed parking spaces meet minimum requirements. The Zoning Ordinance requires 80 spaces and 80 are proposed. The use will be landscaped in accordance with County standards.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The sole ingress/egress driveway in the Property's northeast section will provide safe access with adequate sight distance.

II. Specific Criteria for Structures Used Primarily for Religious Activities (Section

131.N.39)

a. Lot coverage shall not exceed 25 percent of lot area.

The lot coverage shown on the submitted plan states the lot coverage is 4.3 percent.

Because the lot coverage is less than 25 percent, the petition complies with Section 131.N.39.a.

b. Structures used primarily for religious activities may be erected to a greater height than permitted in the district in which it is located, provided that the front, side and rear setbacks shall be increased one foot for each foot by which such structure exceeds the height limitation.

The proposed building height of 24 feet is below the 34-foot maximum height allowed for principal structures in the RC-DEO zoning district, in accordance with Section 131.N.39.b.

c. The Hearing Authority may approve parking facilities which are accessory to a religious facility, and are located on a separate lot, but do not meet the location requirements of subsection 133.B.4.D of the parking regulations by being separated from the religious facility by a public street, if the Hearing Authority finds that the accessory parking facility complies with the following criteria:

- (1) The accessory parking facility is not separated from the lot containing the principal use by an arterial highway of any category.**
- (2) A pedestrian street crossing connecting the accessory parking facility lot to the principal use lot is provided and is made clearly noticeable to drivers by means of both pavement marking and signs**
- (3) The pedestrian street crossing is safe, based upon such factors as, but not limited to: traffic volume at the times(s) of the use of the accessory parking facility; practical traffic speeds; sight distance; length of the crossing; and adequate markings and signage.**
- (4) The entire pedestrian pathway from the accessory parking facility to the principal religious facility is a durable, paved, no-step path.**

Section 131.N.39.c does not apply because the petition does not proposed parking facilities on a separate lot.

ORDER

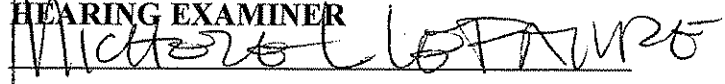
Based upon the foregoing, it is this 4th day February 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the request of Mt. Gregory United Methodist Church for a Structure Used Primarily for Religious Activities Conditional Use to replace an existing church located in an RC-DEO Zoning District is hereby **GRANTED;**

Provided, however, that:

1. The conditional use shall be conducted in conformance with and shall apply only to the religious facility and uses described in the petition and depicted on the plan dated September 2008, and not to any other activities, uses, or structures on the Property.
2. The Petitioner must obtain a building permit for Phase I of the religious facility within five (5) years of the date of this Decision and Order.
3. The Petitioner must commence the use of all requested conditional use activities within two years after the building permit for Phase II is issued.
4. The Petitioner shall comply with all applicable federal, state, and county laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 2/5/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the

appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.